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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Fourteenth session

SUMMARY RECORD OF THE 23rd MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 15 May 1996, at 10 a.m.

Chairperson: Mr. ALSTON

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GE.96-16356 (E)

The meeting was called to order at 10.15 a.m.

ADOPTION OF A GENERAL COMMENT ON THE RIGHT TO ADEQUATE HOUSING (FORCED EVICTIONS) (ARTICLE 11 OF THE COVENANT) (HR/CESCR/NONE/1996/5)

1. The CHAIRPERSON drew the Committee's attention to a draft General Comment which he had prepared and which had been distributed (HR/CESCR/NONE/1996/5). He hoped it would be adopted sufficiently early for it to be sent to the Habitat Conference to be held the following month. He asked those members of the Committee who would be absent from the meeting devoted to the drafting of the General Comment to submit their observations to him so that the Committee could take them into account. If the Committee had insufficient time to agree on a particular wording, it would be possible to consider the matter at the following session, when the General Comment would be completed.

2. With regard to the current draft, he drew attention to the difficulties posed by the expression "forced evictions", in paragraph 3. There were those who believed the expression to be tautological, while others criticized the phrase "illegal evictions" on the ground that it assumed that the law provided adequate protection and was in conformity with the Covenant, which was by no means always the case. The expression "forced evictions" was a compromise that had been adopted by the Commission on Human Rights and the Sub-Commission, and even though the Committee was not compelled to use it, it would be difficult to agree on an alternative. He invited the Committee to adopt the draft General Comment paragraph by paragraph.

Paragraph 1

3. Mr. CEAUSU suggested that the words "governmental obligations" should be replaced by "the obligations of the States parties concerned".

4. Mrs. JIMENEZ BUTRAGUEÑO requested that in the Spanish version the normal word "desalojos" should be used instead of "desalojamientos".

5. Paragraph 1, as amended, was adopted.

Paragraph 2

6. Mr. SIMMA suggested that the words "these statements leave open the most important issue of all" should be replaced by "these statements leave open one of the most critical issues".

7. Mr. CEAUSU suggested that the word "importance" in the first line, which had positive connotations, should be replaced by "seriousness".

8. Paragraph 2, as amended, was adopted.

Paragraph 3

9. Mr. KOUZNETSOV suggested that a sentence should be inserted between the second and third paragraphs to indicate that, in the case of forced evictions, each of the two parties, i.e. the person evicted and the State, had rights

and obligations. It was important to emphasize that the State was not only obliged to facilitate the search for a solution to a housing problem and that individuals had obligation as well as rights.

10. The CHAIRPERSON requested Mr. Kouznetsov to prepare a sentence for consideration by the Committee at its next meeting.

11. Mr. WIMER ZAMBRANO said that the sentence "For the purposes of this General Comment ... without the provision of appropriate forms of legal and other protection" should be deleted as it referred to circumstances that were not covered by the definition of "forced evictions" and failed to specify whether or not the forced eviction was the result of a judicial decision.

12. Mr. SIMMA supported Mr. Wimer Zambrano's suggestion. In addition, paragraph 2 stated that the various definitions of forced evictions provided, inter alia, by the General Assembly and by Agenda 21 left open one of the most critical issues, that of determining the circumstances under which forced evictions were permissible and of spelling out the types of protection that were required in order to ensure respect for the relevant provisions of the Covenant. In other words, some evictions could be legal even though they might seem, at first sight, to be illegal. Consequently, the words "without the provision of appropriate forms of legal and other protection" should be deleted from paragraph 3, as the wording was in fact appropriate in the case of illegal forced evictions, but not for forced evictions in general.

13. Mr. CEAUSU said that it would be sufficient to begin paragraph 3 with the sentence "The international community, ...". He suggested that the sentence "For the purposes of this General Comment ... and without the provision of appropriate forms of legal and other protection" should be amended to specify that the issue concerned the eviction of persons who had a lawful lease or title deed.

14. The CHAIRPERSON emphasized that in most cases the evictions in question concerned persons who had no lease or deed. By way of example, he referred to the situation of indigenous populations who had no deeds to their traditional land. Similarly, the persons concerned might have no deeds and been living for years in shanty towns and were evicted without any action being taken to rehouse them.

15. Mr. RATTRAY said that paragraph 2 clearly set out the circumstances in which the Covenant was violated in the case of a forced eviction. The Committee must now determine in what circumstances forced evictions could be authorized, so as to define the type of protection that was required to ensure compliance with the Covenant. He wondered what type of situation was concerned by paragraph 3 and what the Committee's intention was in providing the definition given in that paragraph. From the human rights viewpoint, it was the duty of the State to provide housing for the most vulnerable sectors of society. Accordingly, the emphasis should be placed on human rights rather than on the legal justification for the evictions.

16. The CHAIRPERSON agreed that the issue was complex. He suggested that the expression "forced, illegal or arbitrary eviction" should be employed in the Comment.

17. Mr. SIMMA, referring to paragraph 2, which stated that the Commission on Human Rights had indicated that forced evictions were a gross violation of human rights, said that forced evictions were not a gross violation of human rights if legal protection was provided. In the case of evictions of squatters, legal protection should be provided for the evictions to be lawful. For that reason, he supported the Chairperson's suggestion that the expression "forced, illegal or arbitrary eviction" should be used in the paragraph; and like Mr. Rattray, he suggested that reference should be made to the eviction of squatters, which accounted for a high percentage of forced evictions. Lastly, he suggested that the word "their" should be deleted before the word "homes" in the sentence "For the purposes of this General Comment ... and other protection" so as to avoid expressing the idea of ownership.

18. The CHAIRPERSON suggested replacing the words "from their homes and/or land" by "from the home and/or land occupied by them".

19. Mr. KOUZNETSOV emphasized the difficulty of defining such situations for the purposes of international law. For that reason, it would be advisable to use a very broad definition covering the multiple facets of forced evictions. He observed that the last sentence of paragraph 3 was incomprehensible in the Russian version.

20. The CHAIRPERSON suggested that the greater part of paragraph 3 might be deleted and the following sentence inserted in paragraph 4: "The practice of forced evictions is the term generally used to encompass all cases of permanent or temporary forced evictions." That would provide a general indication rather than a definition.

21. Mr. CEAUSU considered that in some cases it might be possible to use the expression "inhuman behaviour" to describe forced evictions, for example when homeless people who had taken shelter in the foyer of a building were forcibly evicted in mid-winter. In such cases, the eviction was undoubtedly lawful, but it was also inhuman. In his view, it might be desirable to specify whether the persons evicted were de facto occupants or whether they had the legal right of occupancy. It would also be worthwhile, where evictions were concerned, to distinguish between occupancy and ownership.

22. The CHAIRPERSON was concerned that reference to de facto occupancy might create as many problems as it would solve, as de facto occupancy might acquire a degree of lawfulness the longer it lasted.

23. Mr. ADEKUOYE said that in practice a distinction should be drawn between two types of forced eviction, depending on whether the land or property unlawfully occupied was privately or publicly owned. In particular, the purchase by the authorities of buildings that were unlawfully occupied could give rise to a complicated legal situation.

24. Mr. ALVAREZ VITA noted with concern the use of the words "homes" and "land" near the end of paragraph 3. He too wished to ensure the broadest possible protection for human rights, but wondered whether it was desirable to use the word "land" in conjunction with "housing", which was the word used in article 11 of the Covenant. In addition, since paragraph 9 referred to

"ethnic and other minorities, low-income groups, peasants, pastoralists, and hunters and gatherers", the definition of the word "housing" should also encompass the rural habitat, whereas the existing definitions only seemed to take urbam situations into account.

25. Mr. GRISSA said that the definition adopted for the expression "forced evictions" should be broader than each of the two words composing it. It was also necessary to identify the purpose of an eviction, since the nature of such a measure varied widely depending on whether it was used forcibly to transfer a population from one territory to another without compensation or rehousing or to displace it in order to promote economic development, regional planning or public health. Some grounds for expulsion were perfectly legitimate, and that should be taken into account in whatever definition was adopted.

26. Mr. WIMER ZAMBRANO supported Mr. Ceausu's suggestion regarding the need for a distinction, for practical purposes, between ownership and occupancy where evictions were concerned. The Committee could adopt a definition based on a similar distinction to that made, for example, between ordinary theft and "joy-riding" that was used to describe the taking of cars at the week-end by teenagers in towns. In his view, it was inappropriate for the definition to take account of possession of title deeds, as the persons concerned by an eviction measure had no such deed by definition. He also distinguished a difference between the approach taken under domestic law to clarify an eviction as lawful, and that of international human rights law which defined the conditions under which a lawful eviction would nevertheless be unacceptable from the standpoint of human rights.

27. He pointed out that in Spanish the terms "evicción" and "expulsión" were clearer than "desalojo", which they could replace.

28. The CHAIRPERSON said that the expression "desalojos forzados" was used in the Spanish version of the resolutions on human rights; some confusion might be caused if it was replaced. Further to his own remark concerning Mr. Ceausu's statement, he pointed out to Mr. Wimer Zambrano that the word "home" should be replaced by the word "housing", as the latter designated a temporary situation, unlike the word "home".

29. Mrs. JIMENEZ BUTRAGUEÑO shared Mr. Alvarez Vita's concern about the last part of paragraph 3, in which the word "land" was used. She suggested that the words "from their homes and/or land" should be replaced by "whether they are located in rural or urban areas", a solution that would allow the importance of the rural sector in many countries to be taken into account. She also felt that account should be taken of the situation of tenants, who were also entitled to protection of their housing under article 11 of the Covenant.

30. Mrs. BONOAN-DANDAN considered that the deletion of paragraph 3, in which the author of the draft General Comment had attempted to lay the foundations - in particular, the historical foundations - of a definition for the expression "forced evictions", would merely complicate matters. She acknowledged the justification for Mr. Grissa's remark that a forced eviction might, in some cases, be made for legitimate and praiseworthy reasons; that possibility

should be covered by the definition of forced evictions. Regarding the method of work, she wondered whether it would not be more efficient to press ahead with consideration of the draft General Comment, as subsequent parts contained clarification that should facilitate the adoption of a definition for the expression "forced evictions".

31. The CHAIRPERSON, taking up Mrs. Bonoan-Dandan's suggestion, proposed that paragraph 3 should be temporarily placed in square brackets and that the Committee consider the rest of the document in order to seek clarification that might facilitate the formulation of the definitions in paragraph 3. The Committee should not rush to complete the text of the General Comment on forced evictions before the end of the session at all costs, but should on the contrary take its time and prepare a sound text.

32. Mr. AHMED endorsed Mrs. Bonoan-Dandan's suggestion, which the Chairperson had supported, particularly since he believed that the definition contained in paragraph 3 was unacceptable as it stood. On the other hand, he could agree to the definition contained in paragraph 5, in which the right to housing was recognized even though it was subject to limitations - determined by law, compatible with the nature of economic, social and cultural rights, designed solely for the purpose of protecting the general welfare in a democratic society, etc. In that connection, paragraph 4 provided perfectly acceptable answers to the questions raised by paragraph 3.

33. The CHAIRPERSON suggested the Committee should proceed along the lines suggested by Mrs. Bonoan-Dandan and supported by Mr. Ahmed.

Paragraph 4

34. Mr. MARCHAN ROMERO said that the purpose of paragraph 4 was to underscore the detrimental effects of any violation of the right to housing on the enjoyment of a whole range of human rights. However, he was concerned that, in attempting to enumerate all those rights, the text went into unnecessary detail. He noted with satisfaction, however, that the indivisibility of economic, social and cultural rights and civil and political rights was clearly expressed in the last sentence of the paragraph.

35. He proposed that the first two sentences of paragraph 4 should be replaced by the following sentence: "In view of the links between all human rights, forced evictions in most cases involve violations of a whole range of human rights".

36. Mr. GRISSA supported Mr. Marchan Romero's proposal. Paragraph 4 duly emphasized that forced eviction constituted a violation of several rights, such as the right to privacy and the right to work, although it was perhaps not necessary to draw up a list of all those rights. He proposed that the last sentence, which in his view stated the obvious, should be deleted.

37. The CHAIRPERSON explained to Mr. Marchan Romero and Mr. Grissa that in the text he had endeavoured to respond to the widely-held view that economic, social and cultural rights and civil and political rights were two totally distinct categories of rights. In his view, forced evictions provided a

perfect example of a violation of both categories of rights. However, he had no objection to the deletion of the last sentence, provided the paragraph still expressed what he had intended.

38. Mr. WIMER ZAMBRANO supported Mr. Marchan Romero's proposal that the list of human rights violations resulting from forced evictions should be deleted. Unless that was done, it would be necessary to establish an order of priority and to list only the most important rights.

39. Mr. RATTRAY pointed out that the General Comment was intended for Governments, organizations and individuals, and that consequently it should use examples to illustrate the close links between (a) economic, social and cultural rights and (b) civil and political rights. In order to provide those examples, he proposed that the following sentence should be inserted between the first and second sentences of paragraph 4: "The consequences of forced evictions will often lead to a denial of the enjoyment of many other human rights, both civil and political".

40. The CHAIRPERSON suggested that Mr. Marchan Romero and Mr. Rattray should prepare a new text for the paragraph, in the light of their suggestions and those made by other members of the Committee.

41. Mr. SIMMA considered that the paragraph should be maintained, possibly in a condensed form but preserving its spirit. In his view, most of the examples referred to should be maintained, as forced evictions violated all the rights mentioned. On the other hand, it would be more logical to incorporate in the last sentence the amendment suggested by Mr. Marchan Romero. Lastly, he would shortly propose a new paragraph that would give a clearer and more detailed definition of the links between the right to housing and the right to food, and thus between forced evictions and denial of the right to adequate food.

42. Mr. ALVAREZ VITA suggested the list should be expanded and that there should be no grading of the two categories of rights, as they were interdependent and indivisible. He endorsed the wording proposed by Mr. Marchan Romero, although he would prefer both categories of rights to be described as interdependent so as not to weaken the links between them.

43. The CHAIRPERSON said that he had no objection to the use of the word "interdependent".

44. Mr. GRISSA said that he still failed to see the usefulness of the list contained in paragraph 4. Forced evictions were not necessarily synonymous with the denial of a right. How, for example, could the eviction of populations living in a malaria-infected area constitute violation of their right to health?

45. The CHAIRPERSON replied that it was not possible, in a general comment, to take into consideration each individual case. By its very nature, a general comment could only apply to the great majority of cases. If there were no objections, he would ask Mr. Marchan Romero and Mr. Rattray to submit a revised version of paragraph 4 to the Committee.

46. It was so decided.

Paragraph 5

47. Mr. KOUZNETSOV proposed that the words "as defined in the Covenant" should be inserted after the words "compatible with the nature of economic, social and cultural rights" in the last sentence.

48. Mr. GRISSA, referring to the right to adequate housing and forced evictions, raised the question of natural disasters and similar events.

49. Mr. SIMMA pointed out that there was nothing in the text that blamed Governments for natural disasters. It was clearly stated that in all such circumstances it was the acts or omissions attributable to States parties that could constitute a violation of the right to adequate housing or of the right not to be forcibly evicted.

50. Mr. GRISSA asked who was responsible if Governments were not.

51. Mr. SIMMA replied that the cases referred to were extreme cases which could not be included in a general comment. He endorsed the text of the paragraph under review as contained in the draft and supported Mr. Kouznetsov's proposal concerning the last sentence of paragraph 5.

52. Mr. CEAUSU said, with reference to exceptional circumstances - such as Somalia or the conflict in the former Yugoslavia, that general conclusions should not be drawn from specific cases.

53. Mr. AHMED said that paragraph 5 of the draft General Comment was intended to specify the cases in which forced evictions could be carried out and those in which they could not, in conformity with article 4 of the Covenant, and also, in his opinion, article 2, paragraph 1, and article 11.

54. Mr. ADEKUOYE proposed that most of paragraph 6, i.e. from the second sentence beginning "They might be carried out ..." to the end of the paragraph, should be inserted in paragraph 5, before the conclusions.

55. Mr. GRISSA said he did not endorse the contents of the paragraph since, in the event of armed conflict, security was of greater importance than the right to housing. Survival took priority.

56. The CHAIRPERSON agreed with Mr. Grissa that the rights in question could be violated for manifold reasons that were beyond the control of States parties. Implicitly, the General Comment concerned Governments and their obligations. A Government had obligations and those obligations would be violated, in the cases referred to, if it was clear that failure to fulfil them was not justified by circumstances. The text of paragraph 5 was the result of careful consideration and he did not think that its contents could be interpreted as suggested by Mr. Grissa.

57. Mr. SIMMA fully shared the Chairperson's view.

58. Mrs. AHODIKPE also endorsed the wording of paragraph 5.

59. The CHAIRPERSON suggested that the Committee should go on to consider paragraph 6 pending approval by the Committee of, in particular, the amendment proposed by Mr. Adekuoye. He explained how he had drafted paragraph 5 and suggested, after consideration, that it might be possible to delete the first sentence of that paragraph.

Paragraph 6

60. Mr. GRISSA said that, in his view, paragraph 6 repeated the ideas contained in paragraph 5 and could thus replace it.

61. Mr. KOUZNETSOV suggested that the last sentence (or the last part of the last sentence, depending on the language version) of paragraph 6 should be deleted; in his view, it was inappropriate to refer to unrestrained speculation in the context of development and infrastructure projects. In addition, he thought that the General Comment should primarily deal with forced evictions in peacetime and pointed out that situations in time of war or armed conflict were already covered by a number of instruments such as the Geneva and Hague Conventions.

62. Mr. ADEKUOYE considered paragraph 6 acceptable, but for reasons of logic it should be placed elsewhere in the text.

63. The CHAIRPERSON suggested that some connecting sentences might be required between paragraph 6 and paragraph 7, to indicate that when forced evictions were carried out in the circumstances described in paragraph 6 the applicable law was that of the relevant provisions of the Covenant, which were enumerated in paragraph 7 and the following paragraphs.

64. Mr. AHMED proposed that the first three sentences of paragraph 5 should be deleted and replaced by the substance of paragraph 6. The last three sentences of paragraph 5 would be retained.

65. The CHAIRPERSON said that in his view paragraph 6 had its rightful place between paragraph 5 and paragraph 7; only the deletion of the last sentence, proposed by Mr. Kouznetsov, would be acceptable to him. He insisted that paragraph 6 referred to situations in which forced evictions could be justified and that it would be erroneous from a legal standpoint to associate that element with the limitation provided for by article 4 of the Covenant, which was referred to at the end of paragraph 5. A distinction must be made between the concept of the limitation of rights and the general interpretation of a particular provision. States should not be able to avail themselves of general limitations, but should deal with situations on a case-by-case basis.

66. Mr. AHMED said that, in his view, the right to housing was subject to limitations and was by no means an absolute right. As was stated in paragraph 5, those limitations were of three kinds: they must be (a) determined by law, (b) compatible with the nature of economic, social and cultural rights, and (c) designed solely for the purpose of protecting the general welfare in a democratic society, in accordance with article 4 of the Covenant. Those three limitations applied to the exercise of the right to housing in all circumstances; without them, everyone could do as he pleased.

67. Mr. SIMMA thought that two quite distinct ideas were being confused in the discussion: first, the idea contained in article 4 of the Covenant that States could not subject rights to limitations except under the conditions set out in that article, and second, the idea that forced evictions were neither conceptually nor systematically limitations on the right to housing to which the three conditions set out in article 4 would be applicable.

68. The CHAIRPERSON emphasized that the concept of limitation was a technical feature of international human rights law which was generally expressed at the beginning of each international instrument; in the Covenant, it was reflected in article 4. However, that concept was juridically distinct from the normal interpretation of the provisions of international instruments. The provision reflecting the idea of limitation by no means cancelled the need to interpret the provisions normally.

69. Mr. AHMED repeated that the right to housing was not an absolute right. Indisputably, it was limited and its exercise was subject to three conditions that could be summarized in the following manner: compliance with the law, humanity and promotion of the general well-being. A State had the right to carry out forced evictions, but they must always be effected in compliance with the law, in a humane manner, and foster the general well-being in a democratic society.

70. Mr. SIMMA disagreed with Mr. Ahmed. The Committee must distinguish between, on the one hand, the conditions in which States could impose limitations on a particular right contained in the Covenant and, on the other, the conditions in which forced evictions were legal. For example, if a person was evicted for failing to pay his rent, his eviction would be lawful and the grounds for the eviction would not be covered by article 4 of the Covenant.

71. The CHAIRPERSON emphasized that the question of limitations essentially arose when States declared a state of emergency or imposed comprehensive emergency legislation. As States could always claim that the measures were intended to protect the general welfare, the concept of general limitations must be interpreted very restrictively. Such was the practice followed by, inter alia, the Human Rights Committee. He was concerned that Mr. Ahmed's approach and his interpretation of article 4 of the Covenant might not be understood by a human rights lawyer. As to Mr. Ahmed's idea that there were limitations on the right to housing, it was reflected in the paragraphs of the draft General Comment which followed paragraph 7.

72. Mr. AHMED said he simply wished to make it clear that forced evictions by States could be legally acceptable, provided they were carried out in a humane manner and in conformity with the Covenant. Failure to state that the right to housing was not an absolute right would open the way to unlawful actions.

73. The CHAIRPERSON said that he would take that observation into account in the final drafting of the text.

74. Mr. ADEKUOYE pointed out that the last sentence of paragraph 11 and the first of paragraph 13 of the draft General Comment repeated the idea expressed in paragraph 6. He considered that the first sentence of paragraph 6 should be deleted.

75. The CHAIRPERSON suggested that the discussion on paragraphs 5 and 6 should be concluded and that a new text for those paragraphs should be drafted before one of the next meetings, taking into account all the remarks and observations made.

76. It was so decided.

Paragraph 7

77. Mrs. JIMENEZ BUTRAGUEÑO requested that the Spanish version should refer to "el articulo 2.1" rather than "el párafo 1 del artículo 2".

78. Mr. CEAUSU sought clarification of the meaning of the second sentence of the paragraph.

79. The CHAIRPERSON explained that in most cases, where economic, social and cultural rights were concerned, the main concern was to ascertain whether the necessary resources were available. However, and therein lay the meaning of the second sentence of paragraph 7, the problem of resources rarely arose in connection with forced evictions. In any event, that was not the crux of the matter, as State policy in respect of forced evictions was not a question of resources. He would redraft that sentence in order to clarify it.

80. Mr. AHMED agreed with the Chairman that the question of resources had no relevance to forced evictions as such, but emphasized that it was perfectly relevant to compensation or indemnification, which States owed to evicted persons in some cases.

81. Mr. CEAUSU suggested that if a State had sufficient resources to carry out property development, then it should find the resources to provide compensation to evicted persons whose housing had been demolished and who had lost everything. He had in mind, of course, events in Bucharest under Ceaucescu.

82. Mr. AHMED emphasized the need to specify that States should not invoke article 2, paragraph 1, of the Covenant in order to avoid compensating evicted persons.

83. The CHAIRPERSON said that he would reword paragraph 7 in the light of the observations made. The Committee would continue consideration of the draft General Comment on forced evictions at a subsequent meeting.

The meeting rose at 1 p.m.